IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

WP(C).No. 24942 of 2005(T)

PETITIONER:

B. RAMAKRISHNAN, S/O. LATE E. BHASKARAN NAIR, I GRADE DRAFTSMAN, O/O. ASST.EXECUTIVE ENGINEER, IRRIGATION SUB DIVISION, KOLLAM.

BY ADV. SRI.M.V.THAMBAN

RESPONDENTS:

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1. THE CHIEF ENGINEER, IRRIGATION ADMINISTRATION, THIRUVANANTHAPURAM.

2. STATE OF KERALA, REPRESENTED BY THE SECRETARY TO THE GOVERNMENT, DEPARTMENT OF IRRIGATION, GOVERNMENT SECRETARIAT THIRUVANANTHAPURAM.

3. T.S. VINOD, I GRADE DRAFTSMAN, HYDRAGRAPHY SECTION, DEPARTMENT OF IRRIGATIN THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI.P. NANDAKUMAR

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C).No. 24942 of 2005

APPENDIX

PETITIONER'S EXHIBITS:

EXT-P1: TRUE COPY OF G.O (RT0 NO.3219/97/GE DATED 17.9.1997

EXT-P2: TRUE COPY OF G.O (MS) 166/95/H.Edn. DATED 10.10.1995

EXT-P3: TRUE COPY OF REPRESENTATION DATED 4.8.2003 SUBMITTED BY THE PETITIONER BEFORE THE 1ST RESPONDENT

EXT-P4: TRUE COPY OF REPRESENTATION DATED 11.8.2003 SUBMITTED BY THE PETITIONER BEFORE THE GOVERNMENT

EXT-P5: TRUE COPY OF THE JUDGMENT DT. 22.8.2003

EXT-P6: TRUE COPY OF THE G.O (Rt) NO.630/04/WRD DATED 10.6.2004

EXT-P7: TRUE COPY OF THE RECOMMENDATION LETTER BY THE CHIEF ENGINEER (Admn. CADA) DT. 3.6.2004

EXT-P8: TRUE COPY OF THE REVIEW PETITION DT. 22.6.2004 BY THE PETITIONER BEFORE THE GOVERNMENT

EXT-P9: TRUE COPY OF THE LETTER NO.14564/A3/WRD DT.1.8.2005

/TRUE COPY/

ANTONY DOMINIC,J.

W.P (C) No. 24942 of 2005

Dated this the 9th day of August, 2007

J U D G M E N T

Petitioner was appointed as Overseer Gr.II on compassionate grounds with effect from 15.4.1989. Taking advantage of the Government Order dated 30.3.1995 which provided that appointees on compassionate grounds can apply for change of post, petitioner submitted an application dated 18.4.1995. This was allowed by the Government as per Ext.P1 order dated 17.9.1997. Presently the petitioner is working as Overseer Gr.I. In so far as the 3rd respondent is concerned he is also an appointee under the compassionate appointment scheme who secured employment as Overseer Gr.II with effect from 19.5.1990 The 3rd respondent also applied for change of post pursuant to Government Order dated 30.3.1995 which was allowed by Ext.P2 order dated 10.10.1995 prospectively. Thereafter, on an application made by the 3rd respondent he was given appointment as First Grade Draftsman retrospectively with effect from 29.11.1994 vide G.O (Ms) No.114/98/Irrn. dated 5.11.1998 issued invoking powers under Rule 39 of KS & SSR, 1959. Realising that the 3rd respondent's appointment has

been made retrospective as above, petitioner submitted Ext.P3 representation dated 4.8.2003 before the 1st respondent followed by Ext.P4 dated 11.8.2003 before the 2nd respondent contending that his application for change of post was delayed by the Government by more than two years and therefore the treatment which was given to the 3rd respondent should be extended to him also. Since the representations were not considered by respondents 1 and 2 he filed W.P.(C) No.26897/2003 which was disposed of by Ext.P5 judgment directing consideration of his representations. Even thereafter, the representations remained unattended which compelled the petitioner to file Contempt Case No.779/2004. During the pendency of the contempt case Ext.P6 order was issued by the 2nd respondent on 10.6.2004 rejecting his claim and it is in the aforesaid factual background this writ petition has been filed mainly claiming that he should be given the same treatment as in the case of the 3rd respondent.

2. Learned counsel for the petitioner submits that the 3rd respondent has entered service long after the petitioner and was allowed to shift his effective date of appointment to

29.11.1994 in order to ensure that another junior to the 3rd respondent does not get seniority over the 3rd respondent. It is stated in view of the denial of the petitioner's request the 3rd respondent who is otherwise junior to the petitioner has become senior. The counsel also relies on the judgment of the Apex Court in Surya Kant Kadam Vs. State of Karnataka and Others [2002 (9) SCC 445].

3. Having considered the contention of the counsel, I am satisfied that the petitioner is dis-entitled for the relief under Article 226 of the Constitution of India for reasons of delay and laches. Facts narrated above would disclose that the 3rd respondent claimed benefit with retrospective effect from 29.11.1994 by virtue of Government Order dated 5.11.1998. The petitioner who got category change by Exhibit-P1 order dated 17.9.1997 did not make any attempt as the 3rd respondent. But however, for the first time he stated his claim only in 2003 by submitting Exhibits P3 and P4. If at these distance of time relief is to be granted, by long lapse of time, such seniority positions will be unsettled. Petitioner has not raised his claim in time but was satisfied with whatever he got. On that ground, the

petitioner is not entitled to the reliefs prayed for. If the petitioner is to be granted relief, he has to be placed at least above the 3rd respondent thereby upsetting the seniority position between the petitioner and the 3rd respondent. If such relief is granted, they will be adversely affected.

In my considered view, this writ petition is deserves to be dismissed.

(ANTONY DOMINIC,JUDGE)

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K.THANKAPPAN,J

CRL.A. NO.92 OF 1999

ORDER

25th May, 2007